

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:SB:6:HOU:2:TL-N-4848-01
LDBrigman

date: August 10, 2001

to: Michael E. Todd, Appeals Officer, Houston
M.S. 8000 HAL

from: Area Counsel
(Small Business/Self-Employed: Area 6)

subject: [REDACTED] Deceased

SSN: [REDACTED]
[REDACTED]

EIN: [REDACTED]

This memorandum responds to your request for assistance on August 7, 2001. This memorandum should not be cited as precedent.

You have requested that we review two Forms 872-A relating to an individual taxpayer and the estate of the same individual. Both Forms 872-A are for income taxes for taxable year [REDACTED]. The taxpayer, [REDACTED] died [REDACTED]. For the period [REDACTED] to [REDACTED], his estate filed a Form 1040. For the remainder of [REDACTED] his estate filed a Form 1041.

The Forms 872-A identify the taxpayer as follows:

Signed 872-A for Decedent's Last Return:

1. "[REDACTED] Deceased; [REDACTED] [REDACTED], Independent Executor." This form was accepted by the Service on [REDACTED].

Draft 872-A for Estate of Decedent:

2. "[REDACTED] (Deceased) (Also known as: [REDACTED]) by [REDACTED] (Successor in interest: [REDACTED] (formerly: [REDACTED]) [REDACTED]), Executor, by [REDACTED] (formerly [REDACTED])" This form is in draft.

There are two problems with the executor. [REDACTED] no longer exists. Second, the Probate Court appointed

[REDACTED] as executor, but it also does not exist. In chronological order, the relevant events are listed below:

1. [REDACTED]: [REDACTED] executed a will in which he named [REDACTED] as executor.

2. [REDACTED]: [REDACTED] (Decedent) died.

3. [REDACTED]: [REDACTED] qualified as [REDACTED] of the Estate of Decedent.

4. [REDACTED]: [REDACTED] signed Form 56, Notice Concerning Fiduciary Relationship. The original is not in the file. It appears that a copy was attached to the Form 872-A for the Decedent's last income tax return. This Form 872-A was accepted by the Service on [REDACTED]. The copy of the Form 56 attached to the signed Form 872-A shows a check to the block indicating a revocation of the notice of fiduciary relationship. I was unable to determine if the original also contains the check mark.

5. [REDACTED]: [REDACTED] changed its name to [REDACTED].

6. [REDACTED]: Income Tax Return for Estate and Trusts, Form 1041, for the period [REDACTED] to [REDACTED] filed. The taxpayer is identified as:

"[REDACTED]"
"[REDACTED]"
"[REDACTED]"

[REDACTED], [REDACTED] signed the return as the taxpayer. On [REDACTED], an amended Form 1041 was filed with no changes made to the taxpayer's name.

7. [REDACTED]: Income Tax return, Form 1040, for the period [REDACTED] to [REDACTED] filed. The taxpayer is identified as "[REDACTED]/[REDACTED]"

[REDACTED], [REDACTED] signed the return as the taxpayer. On [REDACTED], an amended Form 1040 was filed with no changes made to the taxpayer's name.

8. [REDACTED]: Form 872-A was accepted by the Service for "[REDACTED], Deceased: [REDACTED] Independent Executor." The Form 872-A covered the Decedent's

last return ([REDACTED]). The Form 872-A misidentified the tax due for the period ended "[REDACTED]." Decedent's tax year actually ended [REDACTED].

9. [REDACTED]: Form 2848, Power of Attorney and Declaration of Representative, received for income tax matter, Form 1040, for [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The taxpayer is identified as "[REDACTED] (Deceased) c/o [REDACTED], Attn: [REDACTED]. Only the Decedent's social security number is on the form. I was unable to locate a corresponding Power of Attorney form for the Form 1041.

8. [REDACTED]: [REDACTED] ceased to exist. It was merged into [REDACTED] and the name [REDACTED] was changed to [REDACTED].

9. [REDACTED]: The taxpayer's representative provided a copy of a motion filed by [REDACTED] in the Probate proceedings for Decedent captioned "Motion to Recognize Name Change of Independent Executor." The Motion requests Letters Testamentary be issued to [REDACTED].

10. [REDACTED]: The statute of limitations for [REDACTED] will expire.

Signed 872-A for Decedent's Last Income Tax Return:

Since this form was accepted by the Service, the fiduciary identified therein ceased to exist. A waiver signed by a fiduciary who no longer exists should be valid, just like waivers signed by corporations before going out of business. However, this waiver incorrectly identifies the tax period. Due to the taxpayer's death on [REDACTED], the tax period ends [REDACTED]. As a contract, we could argue that the parties intended the period to end [REDACTED] which is earlier than the period stated.

Since we have time before the original statute of limitations expires and an 872-A is going to be prepared for the Form 1041, I suggest that we obtain a new 872-A correctly identifying the fiduciary and the tax period. This will prevent any confusion in mailing a statutory notice of deficiency, if that is done in the future. Before preparing a new 872-A, however, we will need a new Form 56 from [REDACTED]. The next section discusses the Form 56.

Draft 872-A; Form 1041 for [REDACTED] to [REDACTED]:

It is not necessary to identify the successors to the original executor, [REDACTED] similar to that done for corporate taxpayers. A fiduciary is not a taxpayer, but is empowered to act for taxpayer. Want v. Commissioner, 280 F.2d 777 (2nd Cir. 1960).

I suggest you ask [REDACTED] to submit a new Form 56. After receiving a corrected Form 56, Notice Concerning Fiduciary Relationship, from [REDACTED], I suggest that the 872-A identify the taxpayer as follows: "[REDACTED] [REDACTED], Deceased, (a/k/a [REDACTED]) by [REDACTED]." Be sure to use the EIN on the 872-A; not SSN. Further, the taxable period for [REDACTED] should be identified as "[REDACTED] through [REDACTED]."

A new Notice of Fiduciary Relationship from [REDACTED] [REDACTED] needs to be submitted for two reasons: First, the [REDACTED] Notice in the file is ambiguous. It appears to actually revoke the Notice of Fiduciary Relationship. Second, it is obviously out-of-date. Given the ambiguity and out-of-date identification of the fiduciary, the I.R.S. would face a problem in identifying the recipient of a statutory notice of deficiency, assuming one is mailed. A major purpose of the notice under I.R.C. § 6903 is to ensure that notices are mailed to the proper persons and to the proper addresses, thereby facilitating the administration of the internal revenue laws. Eversole v. Commissioner, 46 T.C. 56 (1966). The current notice fails to serve that purpose and needs to be corrected. I suggest that the Form 56 list both the SSN and EIN for the Decedent and Estate of Decedent, respectively. Ensure that the block to revoke the fiduciary relationship is not checked, as it is on the current form.

I was unable to locate a Power of Attorney form (Form 2848) for the income tax return filed by the [REDACTED] [REDACTED], Deceased (Form 1041), EIN [REDACTED]. I suggest that we obtain the proper form. Given the current status of the case, any statutory notice of deficiency for the income tax deficiency to the [REDACTED], for the period [REDACTED] through [REDACTED], would have to be mailed to the decedent's last known address. Treas. Reg. § 301.6903-1. We have the time now to prevent this potential problem.

Please do not hesitate to call if you have any questions. My direct dial number is 281-721-7311.

I have not reviewed the substantive income tax question under consideration in this matter by the Office of Appeals. My review was limited to Forms 872-A, 56 and 2848, all of which bear on the mailing of a statutory notice of deficiency. Nor have I reviewed any estate or gift tax returns for the Decedent or his estate.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

GARY A. BENFORD

Area Counsel

(Small Business/Self-Employed:Area 6)

By: _____

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